

No. 9/5/884-6Lab/195. —In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workmen and the management of M/s. The Star Wire (India) Ltd., Mathura Road, Ballabgarh :—

IN THE COURT OF SHRI R.N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 134, 135 and 136/1982
between

SARVSHRI VIJAY PAL SINGH, JHALMAN SINGH AND DEV DUTT SHARMA, WORKMEN
AND THE MANAGEMENT OF M/S. THE STAR WIRE (INDIA) LTD., MATHURA ROAD,
BALLABGARH

Present :

Shri Manohar Lal, for the workmen.

Shri K. P. Aggarwal, for the management.

AWARD

This order will dispose of 3 references (i) No. 134/82 Shri Vijay Pal Singh, (ii) Reference No. 135/82, Shri Jhalman Singh and (iii) Reference No. 136/82 Shri Dev Dutt Sharma Workmen *versus* M/s The Star Wire (India) Ltd., Mathura Road, Ballabgarh, which were consolidated on 5th June, 1984 on the request of the representatives of both the parties and the main proceedings have been held in reference No. 135/1982.

2. In exercise of the powers conferred by clause (d) of sub-section (i) of Section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Sarvshri Vijay Pal Singh, Jhalman Singh and Dev Dutt Sharma, workmen and the management of M/s. The Star Wire (India) Ltd., Mathura Road, Ballabgarh, to this Tribunal for adjudication :—

Whether the termination of services of Sarvshri Vijay Pal Singh, Jhalman Singh and Dev Dutt Sharma was justified and in order? if not, to what relief are they entitled?

3. Notices were issued to all the parties. In the demand, notice dated the 22nd January, 1982, which was treated as claim statement, it was alleged that the claimants were appointed by the respondent in April, 1981 and became ill in January, 1981 but when they reported for duty along with fitness certificate from E.S.I Authority, they were not allowed to join duty and that the complaints were lodged with the Labour Inspector, but to no effect. It was, therefore, prayed that the claimants be reinstated with full back wages.

4. The management in their written statements dated the 1st July, 1982 pleaded that the claimants were originally appointed in April, 1981 as probationers for six months, which period was extended for three months in October, 1981, but the claimants refused to accept the letter of extension due to which the same were posted on the notice board and copies thereof were sent to the claimants under postal certificate. It was then pleaded that on the expiry of period of probation the letters were issued to the claimants in January, 1982, terminating their services and were sent by registered post and that retrenchment compensation and one months notice pay were also sent to the claimants by money orders and that the services of the claimants were rightly terminated.

5. The claimant in their rejoinder dated the 2nd August, 1982 reiterated the pleas taken in the demand notice.

6. On the pleadings of the parties, the following issues were framed on 2nd August, 1982 :—

(i) Whether the workmen are probationers? If so, to what effect? O.P.M.

(ii) Whether the termination of services of Sarvshri Vijay Pal Singh, Jhalman Singh and Dev Dutt Sharma was justified and in order? If not, to what relief are they entitled? O.P.M.

7. It may, however, be mentioned that on 16th October, 1984, *ex parte* proceedings were ordered against Shri Dev Dutt Sharma and Shri Jhalman Singh because their representatives stated that he had no instructions to appear on their behalf. On that very date, Shri K. P. Aggarwal, representative of the management stated that the dispute between Shri Dev Dutt Sharma and the management had already been settled,—*vide* settlement Exhibit M-13 and that the workman had already received Rs. 1412.90 paise in full and final settlement of his claim,—*vide* receipt Exhibit M-14 and had relinquished his rights of reinstatement etc. and that no dispute was now left between the parties, and further that the documents Exhibit M-13 and M-14 were correct. In view of the testimony of

Shri K.P. Aggarwal, representative of the management and recitals made in the documents Ex. M-13 and M-14, the dispute between Shri Dev Dutt Sharma and the respondent stands settled,—*vide* settlement Ex. M-13 and receipt Ex. M-14, and as such reference No. 136/1982 stands disposed of accordingly.

8. It may be mentioned that *ex parte* proceedings have been ordered against Shri Jhalman Singh in reference No. 135/1982 as already mentioned above. After going through the entire evidence and hearing the representatives of both the sides, my findings on the above issues are as under :—

Issue No. 1 (In reference No. 134/82 and 135/82) :

9. The management examined MW-1 Shri K.L. Katyal, Personnel Officer of the respondent, who stated that the claimants were appointed,—*vide* letters Ex. M-1 as probationers for a period of six months, which period was extended for three months,—*vide* letters Ex M-2 but the claimants had refused to receive the same and as such these were pasted on the notice board. He further stated that on the expiry of the probation period, the claimants services were terminated,—*vide* letters Ex. M-3 and since the claimants refused to receive the same, these were sent by post. He further stated that notice pay and compensation were also sent to the workmen,—*vide* money order receipts Ex. M-4 and M-5 and that Ex. M-6 was the copy of the standing orders of the respondent-management. The postal receipt Ex. M-7 and M-8, have been proved by this witness.

10. The claimants, while appearing as WW-1 deposed that their signatures were not obtained on the appointment letters Ex. M-1 nor letters Ex. M-2, extending period of probation nor the termination letters Ex. M-3 were received by them. They further deposed that no amount was received by money order, but on the other hand, when they came to join duty along with fitness certificate issued by the E.S.I. Doctor, they were not allowed to join duty. Medical Certificate Ex. W-1 and fitness certificate Ex. W-2 have been proved by them. Ex. W-3 is the copy of the letter issued by the E.S.I. regarding benefit under E.S.I. Scheme. Ex. W-4 is the copy of the complaint made to the management. Ex. W-5 is the postal receipt and Ex. W-6 is the A.D. Receipt. Ex. W-7 is the copy of the complaint made to the Labour Inspector.

11. A perusal of the above evidence would show that Shri Jhalman Singh was appointed on 1st April, 1981,—*vide* letter Ex. M-1 on probation for a period of six months, which period was extended for three months on 1st October, 1981,—*vide* letters Ex M-2 and the letter Ex. M-3 discharging him from duty was issued on 1st January, 1982. In case of Shri Vijay Pal Singh, he was appointed on probation for six months on 1st March, 1981,—*vide* letter Ex. M-1 which period was extended for three months on 3rd October, 1981,—*vide* letter Ex M-2 and that he was discharged on 2nd January, 1982,—*vide* letter Ex. M-3. Notice pay and compensation were sent to them—*vide* money order receipts Ex. M-4 and M-5. These documents and testimony of Shri K.L. Katyal (MW-1) go to show that the claimants were appointed on probation for six months in the beginning of 1981 which period was extended for three months in October, 1981 and on the expiry of period of probation of nine months, the claimants services were terminated in the beginning of January, 1982. The oral testimony of the claimants while appearing as WW-1 to the effect that they were not appointed on probation cannot be accepted because the management has led documentary evidence to prove that the claimants were appointed as probationers for a period of six months, which period was extended by three months. The claimants denied their signatures on the appointment letters Ex. M-1. The respondent examined Shri J.L. Katyal, Personnel Officer as MW-1 who deposed that the claimants had affixed their signatures on these documents. Moreover MW-2 Shri Ashok Kashyap, Handwriting and Finger Print Experts, deposed that he had examined the disputed signatures on the appointment letters with the specimen signatures of the claimants and that enlarged photographs were Ex. M-10 and M-11 and the negative Ex. M-12. He further stated that his report was Ex. M-9 and that the disputed signatures tallied with the specimen signatures. No evidence has been led in rebuttal by the claimants. The evidence of the expert produced by the respondent corroborates the version of MW-1 Shri J.L. Katyal that the claimants had affixed signatures on the appointments letters. The claimants have relied on the medical certificate as well as fitness certificate Ex. W-1 and W-3 respectively, which go to show that they remained under treatment of E.S.I. Doctor. These documents do not help the claimants because the certificate shows that they went to the E.S.I. Doctor on 4th January, 1982 where as Shri Jhalman Singh claimant was discharged on 1st January, 1982 and Shri Vijay Pal Singh on 2nd January, 1982 *vide*,—letters Ex. M-3. Moreover, the claimants were discharged on the expiry of period of probation, which act was not punitive in character. In the ruling reported as Dr. T.C. Pillai and the Indian Institute of Technology, Guindy, Madras, 1971-1-LLJ page 530, it is laid down that the order discharging a probationer is not punitive in character. In the ruling reported as Buckingham & Carnatic Co. Ltd. vs. Venkathiah and another, 25 F.J.R. page 25, it is laid down that object of Section 73 (1) of the Employees State Insurance Act, is to put a sort of moratorium against all punitive actions during pendency of the employee's sickness. These provisions of the Employee's State Insurance Act are not attracted to the present cases because the order discharging the probationers on the expiry of period of probation was not punitive in character. Moreover the medical certificates do not help the claimants because before the claimants went to the E.S.I. Doctor, they had already been discharged, as already mentioned above. Consequently, it is held that the claimants were probationers. The issue is decided accordingly in favour of the respondent-management.

Issue No. 2:

12. In issue No. 1 it has been found that the claimants were probationers. In the ruling reported as Kedar Nath Bahl and State of Punjab and others, 1973 (27) F.L.R. page 20, it is laid down that at the end of the period of probation an order of confirmation must be passed and if no such order has been passed, he will continue in his post as a probationer. In the ruling reported as Dy. General Manager and M. Shasidan and others, 1979(39) F.L.R. page 24, it is laid down that in a case where a probationer whose service is liable to be terminated if it is found unsatisfactory is discharged from service on the basis that it is so found, it is not a termination on account of any misconduct on the part of the employee and therefore, in such a case, there is no need to hold

an enquiry. In the ruling reported as Oil and Natural Gas Commission and Dr. Md. S. Iskander Ali, 1980-II-LLJ page 155, it is laid down that the order terminating the service of the probationer was *prima facie* an order of termination simpliciter without involving any stigma. In the ruling reported as Palanikumar (K) and Indian Bank and another, 1980-I-L.L.M. page 468m it is laid down that it is well settled that probation means satisfaction of the employer and once the employer is not satisfied in terms of the contract, it is well open to the employer to dispense with the services of the particular employee, and that the impugned order is one of termination of probation simpliciter. Following these rulings, the respondents were competent to discharge the claimants on the expiry of period of probation of 9 months which was an order of termination simpliciter.

12. It was argued on behalf of the workmen that the provisions of Section 15 of the Industrial Disputes Act, 1947 were not complied with. Firstly, these provisions apply to a case where the workman has continuous service for not less than one year. In the present case, the claimants remained in service on probation for nine months only and not for a period of one year. Secondly, in Section 25-B of this Act, the workers should have completed 240 days. In the present case out of nine months (270 days), the claimants did not come for duty for 36 weekly rest days and as such, they actually worked for 234 days. Thirdly, as a precautionary measure, the respondent complied with the provisions of Section 25-F of this Act by sending one month's pay and compensation to the claimants by money order,—*vide* receipts Ex. M-4 and M-5 but the claimants refused to receive the amount and the amount was received back as mentioned on the back of Ex. M-5. Shri Vijay Pal Singh, even refused to receive the termination letter Ex. M-3, in which he was asked to receive the retrenchment compensation and notice pay, due to which the amount was sent by money order. Shri Jhalman Singh was not present on 1st January, 1982 in the factory when the termination letter Ex. M-3 was issued and the amount was sent to him,—*vide* documents Ex. M-4 and M-5 but he too refused to receive the amount as mentioned on the back note of document Ex. M-5. It was a case of discharge of a probationer and as such the delay of 2/3 days in sending the amount by the money order with in the presence of peculiar case does not make any difference. Consequently, the order discharging Shri Jhalman Singh and Vijay Pal Singh from service on the expiry or period of probation was justified and in order.

13. In view of the above discussion, it is held that the dispute between Shri Dev Dutt Sharma and the respondent in reference No. 136/82 already stands settled in view of the settlement Ex. M-13 and receipt Ex. M-14 and the award is passed accordingly in his case. As regards reference Nos. 134 and 135 of 1982 relating to Shri Vijay Paul Singh and Jhalman Singh, they are not entitled to any relief because the order discharging them from service after the period of expiry of probation was justified and in order and the award in their case is passed accordingly.

Dated, the 31st December, 1984.

R. N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endst. No. 10, dated the 3rd January, 1984.

Forwarded (four copies) to the Commissioner & Secretary to Govt. Haryana, Labour & Employment Departments, Chandigarh, as required under Section-15 of the Industrial Disputes Act, 1947.

R.N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

The 18th January, 1985

No. 9/5/884-6Lab./346.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of Director, National Dairy Research Institute, Karnal.

BEFORE SHRI R. N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD

Reference No. 361/1982

between

SHRI RAM NATH WORKMAN AND THE MANAGEMENT OF DIRECTOR, NATIONAL
DAIRY RESEARCH INSTITUTE, KARNAL

Present :—

Shri Ram Nath workman in person.

Shri Raj Kumar for the management.

AWARD

In exercise of powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri Ram Nath workman and the Management of Director, National Dairy Research Institute, Karnal, to this Tribunal, for adjudication : -

Whether the termination of service of Shri Ram Nath was justified and is in order ? If not, to what relief is he entitled ?

2. Notices were issued to both the parties. In the claim-statement filed on 13th December, 1982, it was alleged that the claimant was employed by the respondent on 27th July, 1980 as Laboratory Attendant in Chemical Engineering Laboratory of National Dairy Research Institute, Karnal and rendered meritorious services. It was then alleged that the services of the claimant were terminated by the respondent without giving any show-cause notice or serving any charge-sheet which was against the rules of natural justice and as such, the claimant was entitled to reinstatement with full back wages.

3. The respondent in their written statement, dated 22nd February, 1983, pleaded that the respondent institute was not an industry as defined in the Industrial Disputes Act, 1947, nor the claimant was a workman. It was further pleaded that the services of the claimant were terminated on account of mis behaviour etc. the details of which were given in the written statement.

4. The claimant in his replication, dated 22nd March, 1983, reiterated the pleas taken in the claim statement.

5. A preliminary objection has been raised by the respondent to the effect that respondent is research station of the Indian Council of Agricultural Research, Krishi Bhavan, New Delhi, which is under the control of the Ministry of Agriculture, Government of India, and the respondent institute functions under the authority of the Central Government and that the appropriate Government competent to deal with any industrial dispute is only the Central Government and as such the reference made by the Haryana Government is bad in law. It has been argued that Indian Council of Agricultural Research is an autonomous body and was financed by the Government of India. In para No. 6 of the appointment letter, it is mentioned that the appointment may be terminated without assigning any reason by one month's notice on either side under rule 5 of the Central Civil Service (Temporary Service) Employees Rules, 1965, as applicable *mutatis mutandis* to the employees of the Council. Rule 2-A of the rules of Indian Council of Agricultural Research lays down that the expression "Society" means the Indian Council of Agricultural Research, a society registered under the Societies Registration Act, 1850. The Reliance has been placed on the award, dated 29th October, 1982, passed by the Presiding Officer, Labour Court, Maduri, in which it was held that the Central Tobacco Research Institute, Research Station, Vadasandur, was being run under the authority of the Government of India and that the appropriate Government would be the Central Government to make any reference under the Industrial Disputes Act, 1947. It may be mentioned that the latest amendment in the Industrial Disputes Act, 1947, which came into force on 21st August, 1984, the scientific research or Institutes have been excluded from this scope of the expression 'Industry' as defined in Section 2-A of the Industrial Disputes Act, 1947. The present dispute between the parties, however, arose prior to the coming into force of this amendment inasmuch as reference was made in the year, 1982. Therefore, the preliminary objection raised by the respondent prevails and it is held that the reference made by the Haryana Government is not proper and as such this Tribunal has no jurisdiction to decide the present reference. The award is passed accordingly.

R. N. BATRA,

Presiding Officer,
Industrial Tribunal, Haryana, Faridabad.

Dated, the 10th January, 1985.

Endorsement No. 57, dated 10th January, 1985.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

R.N. BATRA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.